

CHAPTER NO. 348

SENATE BILL NO. 1080

By Womack

Substituted for: House Bill No. 919

By Sands

AN ACT To amend Tennessee Code Annotated, Title 56, Chapters 9 and 12, relative to insurance guaranty associations and the liquidation of insolvent insurers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 9, Part 1, is amended by adding the following new section:

Section 56-9-1___. (a) The receivership court shall receive as self-authenticated any of the following when offered by the commissioner:

(1) Certified copies of the financial statements made by the insurer; and

(2) Certified copies of examination reports of the insurer made by or on behalf of the commissioner.

(b) The receiver shall have the authority to certify to the correctness of any paper, document or record of his office and to make certificates of the receiver certifying any fact contained in the papers, documents or records of the office of the receiver; and the same shall be received in evidence in all cases in which the original would be evidence.

(c) At any receivership hearing or proceeding, the verified petition and exhibits filed therewith shall be received as prima facie evidence of the facts therein contained.

(d) The appointment of the commissioner as receiver shall in no way operate to bring records of a delinquent insurer under Tennessee Code Annotated, Section 10-7-503. If a third party successfully pursues a records request in the receivership court, the receiver shall be reimbursed for the reasonable cost of producing such records.

SECTION 2. Tennessee Code Annotated, Section 56-9-327, is amended by deleting the existing section in its entirety and substituting instead the following new section:

Section 56-9-327. (a) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. Within thirty (30) days from the mailing of the notice, the claimant may file objections with the liquidator. Any filed objections shall clearly set out all facts and the legal basis, if any, for the objections and the reasons why the claim should be allowed. If no such filing is made, the determination is final.

(b) Whenever objections are filed with the liquidator and the liquidator does not alter the determination of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected, not less than ten (10) nor more than thirty (30) days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee. The hearing shall be conducted on the record in an informal manner and the formal rules of evidence and civil procedure need not be strictly applied. Hearings shall be held without a jury. Prehearing discovery shall be limited to such pretrial discovery as expressly permitted in arbitration proceedings under Tennessee Code Annotated, Title 29, Chapter 5.

(c) When a disputed claim is heard by a referee, the referee shall submit written findings of fact and conclusions of law along with the recommendation for disposition to the court. The referee's recommendation shall become the final judgment of the court, unless objections to the referee's recommendation are filed by the liquidator or a claimant with the court within fifteen (15) days after the recommendation is mailed to the liquidator and claimant.

(d) The final disposition by the court of a disputed claim, whether after a hearing by the court or after a recommendation by a referee, shall be deemed a final judgment for purposes of appeal.

(e) The courts of this state may make special rules of procedure for disputed claims, if such rules are not inconsistent with this act.

SECTION 3. Tennessee Code Annotated, Section 56-9-333, is amended by deleting the existing section in its entirety and substituting instead the following new section:

Section 56-9-333. (a) All unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest to the person entitled thereto or that person's legal representative upon proof satisfactory to the state treasurer of his or her right thereto. Any amount on deposit not claimed within six (6) years from the discharge of the liquidator shall be deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the general fund. Alternatively, the liquidator may elect to apply to the court for authority to hold the unclaimed funds subject to distribution for a period of two (2) years. Thereafter, any unclaimed funds may be distributed to approved claimants who have previously received a distribution, if it is economically feasible for the liquidator to make the distribution, or the liquidator may apply to the court for permission for the funds to be held by the commissioner for the purpose of defraying the costs and expenses of administration of other insolvent insurers for which there are insufficient assets to fund the costs and expenses of administration. With the approval of the supervising court, the liquidator may deposit unclaimed and withheld funds into a segregated account to be known as the closed estate fund, hereinafter the fund. The commissioner may thereafter use monies held in the account to fund the administrative expenses of proceedings against persons subject to this act that lack sufficient assets to fund administration. The commissioner shall maintain complete records with respect to all transactions involving the fund and shall prepare an annual accounting of the fund subject to audit by the Comptroller of the Treasury. If subsequent to disbursement of monies from the fund, assets of

the person become available to fund administration, the fund shall be reimbursed before other administrative expenses are paid.

(b) All funds withheld under this act as a special claim and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid in accordance with a priority of distribution of claims established by the liquidator. Any sums remaining which would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection (a), unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation.

SECTION 4. Tennessee Code Annotated, Section 56-9-401, is amended by deleting the existing section in its entirety and substituting the following new section:

Section 56-9-401. (a) If a domiciliary liquidator has not been appointed, the commissioner may apply to the chancery court by verified petition for an order directing the commissioner to act as conservator to conserve the property found in this state or any other state of an alien insurer not domiciled in this state or property found in this state or any other state of a foreign insurer on any one or more of the following grounds:

(1) The insurer is insolvent;

(2) Any of its property has been sequestered by official action in its domiciliary state, or in any other state;

(3) Enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;

(4)(A) Its certificate of authority to do business in this state has been revoked or that none was ever issued; and

(B) There are residents of this state with outstanding claims or outstanding policies.

(b) When an order is sought under subsection (a), the court shall cause the insurer to be given notice and time to respond thereto as is reasonable under the circumstances.

(c) The court may issue the order in whatever terms it shall deem appropriate. The filing or recording of the order with the clerk of the chancery court or the register of deeds of the county in which the principal business of the company is located, shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded which that register of deeds would have imparted.

(d) The conservator shall hold and conserve the assets until such time as the commissioner in the domiciliary state begins formal delinquency proceedings against the insurer or until an order terminating conservation is entered under subsection (e). Once a delinquency proceeding is instituted in the domiciliary state, the conservator may either turn the property over to the domiciliary commissioner or petition to be appointed ancillary receiver. If the insurer is an alien insurer that has not established a domicile in the United States under an appropriate port of entry statute, the conservator may petition the court for an order of liquidation under any permissible ground. The application may seek,

and the order of liquidation shall provide, that all property and assets, affairs and claims against the alien insurer shall be vested in the liquidator in this state as if the insurer was domiciled in this state. Provided, however, if an order of liquidation of the alien insurer has been entered by a court of competent jurisdiction in a reciprocal state, which provides for the reciprocal state's receiver to be treated as if it is the domiciliary liquidator, then the order of liquidation in this state shall be issued as an order appointing an ancillary receiver.

(e) The conservator may at any time petition the court for an order terminating conservation of the property of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make a finding and issue an order at any time upon motion of any interested party, but if the motion is denied all costs shall be assessed against such party.

SECTION 5. Every proceeding heretofore commenced under the laws in effect before the effective date of this act shall be deemed to have commenced under this act for the purpose of conducting the proceeding henceforth, except that, in the discretion of the commissioner, the proceeding may be continued, in whole or in part, as it would have been continued had this act not been enacted.

SECTION 6. If any provision of this action or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision of application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 27, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 14th day of June 1999


DON CONQUIST, GOVERNOR